

1
2
3
4
5
6
7
8
9
0
1

3
4
5
6
7
8
9
0
1

12

13
14
15
16
17
18
19
20
21
22
23
24

¹ On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² The EPS rating information is as follows: Complaint filed: July 2, 2014. Response from Committee filed July 22, 2014. Response from Lucille Harris filed August 4, 2014. Response from Martin Harris on behalf of Tuff Boy Sales filed August 7, 2014.

1 For the reasons set forth below, the Office of General Counsel recommends that the
2 Commission dismiss the allegations that Denham for Congress³ and David Bauer in his
3 official capacity as treasurer (collectively the "Committee"), Lucille Harris, and William
4 R. Harris⁴ violated the Act and Commission regulations related to this matter. The Office of
5 General Counsel also recommends that the Commission find no reason to believe that Tuff
6 Boy Sales, Inc. ("Tuff Boy Sales") violated the Act and Commission regulations as alleged in
7 this matter.

8 Complainant Michael J. Barkley ("Complainant") alleges that during the 2012
9 campaign, a sign supporting Denham's campaign was erected in the equipment yard of Tuff
10 Boy Sales. Compl. at 2-3. According to the Complainant, the sign, which displayed the
11 phrase "Jeff [flag graphic] Denham U.S. Representative," included the following statement:
12 "Paid for by William and Lucille Harris and authorized by Jeff Denham for Congress." *Id.* at
13 2; *see also id.*, Ex. A (photograph of sign). The Complainant also notes that the sign, and
14 another Denham campaign sign located on the same lot, *see id.*, Ex. C (photograph of second
15 sign)⁵ could have been viewed from a heavily-travelled freeway for an extended period of
16 time and, thus, provided a valuable in-kind contribution to the Committee. *Id.* at 3. The
17 Complainant alleges that the Committee did not disclose an in-kind contribution from
18 Lucille Harris or "anyone else from Tuff Boy" related to this sign on the Committee's

³ Denham for Congress is the principal campaign committee of Congressman Jeff Denham. Barkley was one of Denham's opponents in the June 5, 2012 primary election for California's Tenth Congressional District.

⁴ The Complainant refers to an obituary of William Harris, available at <http://www.plfryandson.com/obituaries/William-Robert-Harris4132093805/H/Obituary> (last visited December 10, 2014). According to the obituary, Mr. Harris died on October 27, 2012, before the Complaint and Responses in this matter were filed.

⁵ Only the words "Jeff Denham" are legible on the second sign, *see* Ex. C.

1 reports. *Id.* at 2. Accordingly, the Complainant maintains that the signs may have
2 constituted an illegal in-kind contribution from Tuff Boy Sales, in violation of 52 U.S.C.
3 § 30118(a) (formerly 2 U.S.C. § 441b(a)). *Id.* Alternatively, the Complainant posits that if
4 an unknown individual owned the property and placed the signs there, he or she may have
5 made a contribution exceeding \$2,500, the 2012 per-election contribution limit.
6 *See* 52 U.S.C. §§ 30116(a)(1)(A) and 30116(f) (formerly 2 U.S.C. §§ 441a(1)(a) and
7 441a(f)).

8 Baucr filed a Response on behalf of the Committee stating that the property in
9 question was owned by individuals, not a corporation, one of whom “posted [the sign] with
10 the consent of the other owners.” Committee Resp. at 1. Bauer contends, without more, that
11 the Committee’s “purchase of the sign” was disclosed on the “appropriate” financial
12 disclosure reports. *Id.*

13 Lucille Harris filed a sworn Declaration asserting that none of the “Tuff Boy
14 companies” own the parcel of land at issue, although Tuff Boy Sales and Tuff Boy Leasing,
15 LLC lease approximately 35 acres of the property in order to store trailers and equipment.
16 Lucille Harris Declaration (“Lucille Harris Decl.”) at ¶ 5. Mrs. Harris indicates, however,
17 that the “site whereon the political banners are located has no Tuff Boy affiliation.” *Id.* at
18 ¶ 6.⁶ Thus, her sworn Declaration appears to rebut the implication that Tuff Boys Sales had

⁶ Mrs. Harris explains that she and Mr. Harris, who formerly owned the property, transferred ownership to their children, Martin Harris, Marcia Perkins, and Melissa King, on January 1, 2011, who subsequently transferred their interests to a trust, entitled the “Harris Irrevocable Trust” (“HIRT”). *Id.* at ¶ 3. The property is currently owned by a partnership called the “Mosssdale Group” (“Mosssdale”), which holds title in the name of three individuals, Kirsten Moorhead, Keeley Duncan, and Connie Liberato, and also in the name of the HIRT. *Id.*; *see also id.*, Ex. 1 (copy of 2014 tax return for “Mosssdale Farms,” which seems to be the same entity as the “Mosssdale Group,” and letters addressed to partners Moorhead, Duncan, Liberato, and the HIRT). *See also id.*, Ex. 2 (document detailing transfers of ownership of the property at issue). According to Mrs. Harris, a political sign supporting Congressman Denham and two signs supporting non-federal candidates are currently on the property and will be moved to adjacent privately-owned property to comply with local election rules. Lucille Harris Decl. at ¶ 9.

1 any leasehold interests over the property at issue concerning the trailers displaying the
2 campaign signs.

3 Mrs. Harris declares that no contributions were made by "Harris parties" to the
4 Committee, aside from "donations from Harris individuals," *id.* at ¶ 11, and she attaches
5 what appears to be documentation for three contributions made to the Denham campaign by
6 herself and Martin Harris. *Id.*, Ex. 3. The bottom of the first page displays a photocopy of a
7 check dated March 23, 2012 for \$500 from the account of "William R. Harris" and "Lucille
8 Harris." *Id.*, Ex. 3 at 1.⁷ The bottom of the second page displays a photocopy of a check
9 dated October 22, 2012 for \$500 written on the account of "W/L Harris Properties, LLC."
10 *Id.*, Ex. 3 at 2. The signature on the check is illegible but the first letter appears to be an "L."
11 *Id.* The top portion of the page is a photocopy of an announcement for a Denham fundraiser,
12 which lists "Martin Harris" as the contributor. *Id.*⁸ The third page consists of a photocopy of
13 a note from Lucille Harris dated March 29, 2013, in which she declines an invitation to a
14 Denham fundraiser and states that she is enclosing a \$200 contribution. *Id.*, Ex. 3 at 3. Also

⁷ The signature on the check is illegible but the first letter appears to be an "L," and the memo portion of the check includes the phrase "re – for Martin Harris Contr." *Id.* The top portion of the page appears to be a photocopy of a Denham Committee solicitation form, which indicates that "Martin Harris" made the contribution. *Id.* It appears that the Committee attributed the contribution to Martin Harris. See Committee's amended 2012 Pre-Primary Report, filed on July 13, 2012, at 8. However, Martin Harris's name is not listed on the printed check as an account holder, and it appears that Mrs. Harris may have signed it. Thus, it is possible that Lucille and William Harris may have provided the funds for the contribution made in Martin Harris's name, potentially in violation of 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f), which prohibits making a contribution in the name of another. However, given that this potential violation involves a relatively small contribution and the facts presented are inconclusive, we are not recommending any Commission action on this issue.

⁸ Nonetheless, the Committee attributed the contribution to Lucille Harris, *see infra*, which appears to be in line with how the check was written, although it is unclear why the donor card lists Martin Harris as the contributor.

1 included is what appears to be a photocopy of a check register indicating that the "Lucille
2 Harris S. Trust" made a \$200 contribution to the Denham campaign on April 1, 2013. *Id.*⁹

3 A review of the Committee's financial disclosure reports identifies the following four
4 contributions from Lucille Harris and Martin Harris:¹⁰ \$500 from Martin Harris on April 13,
5 2012;¹¹ \$454.06 from Martin Harris for "signs" on September 14, 2012, described by the
6 Committee as both a "contribution" and an "expenditure," but without the notation "in-
7 kind";¹² \$500 from "W/L Harris Properties, LLC" ("Harris LLC"), on November 7, 2012;¹³
8 and \$200 from Lucille Harris on April 9, 2013.¹⁴ It appears that the April 13, 2012
9 contribution of \$500 from Martin Harris corresponds to the first contribution reflected on
10 Lucille Harris's Declaration, Ex. 3 at 1. It also appears that the November 7, 2012
11 contribution of \$500 from Lucille Harris corresponds to the second contribution reflected on
12 Mrs. Harris's Declaration, Ex. 3 at 2, and that the April 9, 2013 contribution of \$200 from
13 Mrs. Harris corresponds to the third contribution reflected on Mrs. Harris's Declaration, Ex.
14 3 at 3.

15 Martin Harris, the chief executive officer of Tuff Boy Sales who is Mrs. Harris's son,
16 filed a Response on behalf of the company, which attaches and adopts the Declaration and

⁹ All three pages also include what appear to be handwritten notations, including "a/c #125," "nondeductible," and "a/c 125 draw." The second page also includes the phrase "LLC + Partnership." We have no additional information concerning these comments, including who wrote them or what they mean.

¹⁰ A review of the Committee's filings discloses no contributions from William Harris.

¹¹ See Committee's amended 2012 Pre-Primary Report, filed on July 13, 2012, at 8.

¹² See Committee's amended 2012 October Quarterly Report, filed on April 30, 2013, at 22 and 126.

¹³ See Committee's amended 2012 Post-General Report, filed on May 13, 2013, at 63. Contributions by limited liability companies ("LLCs") are permissible if they elect to be treated as partnerships for tax purposes, but not if they elect to be taxed as corporations. See 11 C.F.R. § 110.1(g). The Harris LLC contribution is followed by a memo entry attributing the contribution to Lucille Harris, who appears to be a partner. *Id.* at 63. Therefore, on the face of the report, the contribution appears to be permissible.

¹⁴ See Committee's amended 2013 July Quarterly Report, filed on September 17, 2013, at 27.

documents previously filed by Mrs. Harris. Martin Harris Resp. at 1. Neither Martin Harris nor Mrs. Harris specifically address the Complainant's assertion concerning payment for the sign.

The Act and Commission regulations define "contribution" as any "gift, subscription, loan . . . or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); *see also* 11 C.F.R. § 100.52(a). "Anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1). Itemized in-kind contributions must be reported as both itemized contributions and itemized expenditures on the same report, *see* 11 C.F.R. § 104.13(a)(1) and (2); *see also* Advisory Op. 2004-36 at 2-3, and should be labeled "in-kind." *See* Instructions for FEC Form 3 and Related Schedules, available at <http://www.fec.gov/pdf/forms/fecfrm3i.pdf>, at 10, 13; *see also* *Campaign Guide for Congressional Candidates and Committees*, available at <http://www.fec.gov/pdf/candgui.pdf>, at 95-96. The Act and Commission regulations also prohibit candidates and their campaign committees from knowingly accepting or receiving corporate contributions in connection with federal elections. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); *see also* 11 C.F.R. § 114.2. Given Mrs. Harris's sworn Declaration, which asserts that the land on which the signs were located had "no Tuff Boy affiliation,"¹⁵ the Office of General Counsel recommends that the Commission find no reason to believe that Tuff Boy Sales, Inc. violated the Act or Commission regulations as alleged in this matter.

¹⁵ *See* Lucille Harris Decl. at ¶ 6.

1 The Committee's Response and its 2012 October Quarterly Report, which indicate
2 that Martin Harris paid for the sign, appear to be in conflict with the sign's disclaimer, which
3 indicates that William and Lucille Harris paid for the sign.¹⁶ Therefore, the Committee may
4 have violated 52 U.S.C. § 30104(b)(2)(A) (formerly 2 U.S.C. § 434(b)(2)(A)) by inaccurately
5 reporting who paid for the sign, and also by failing to label the contribution for the sign as
6 "in-kind." Alternatively, the disclaimer on the sign may have been inaccurate, in violation of
7 52 U.S.C. § 30120(a)(2) (formerly 2 U.S.C. § 441d(a)(2)). However, the amount at issue is
8 relatively *de minimis*.

9 Therefore, the Office of General Counsel recommends that the Commission exercise
10 its prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss
11 the allegations that Denham for Congress and David Bauer in his official capacity as
12 treasurer, Lucille Harris, and William R. Harris violated the Act and Commission regulations
13 related to this matter. This Office also recommends that the Commission approve the
14 attached Factual and Legal Analyses and the appropriate letters, and close the file.

15 RECOMMENDATIONS

- 16
17 1. Dismiss the allegations that Denham for Congress and David Bauer in his official
18 capacity as treasurer, Lucille Harris, and William R. Harris violated the Federal
19 Election Campaign Act of 1971, as amended, and Commission regulations related to
20 this matter;


¹⁶ Whenever any person makes a disbursement for a public communication that expressly advocates the election or defeat of a clearly identified candidate, he or she must include a disclaimer. 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d(a)); *see also* 11 C.F.R. § 110.11(a)(2), (b). Public communications authorized by a candidate, an authorized committee of a candidate, or an agent of either but paid for by another person, must clearly state that the communications were paid for by such person but authorized by the political committee. 52 U.S.C. § 30120(a)(2) (formerly 2 U.S.C. § 441d(a)(2)); *see also* 11 C.F.R. § 110.11(b)(2). Under Commission regulations, a communication expressly advocates the election or defeat of a clearly identified federal candidate if it uses "phrases" such as "vote for the President," "re-elect your Congressman," "vote against Old Hickory," or "defeat" accompanied by a picture of one or more candidate(s), among other enumerated examples, or "communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc., which say "'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 C.F.R. § 100.22(a); *see also* *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

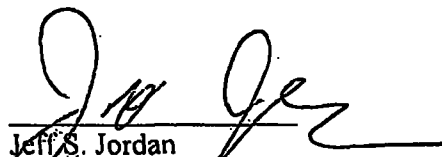
2. Find no reason to believe that Tuff Boy Sales, Inc. violated the Federal Election Campaign Act of 1971, as amended, and Commission regulations as alleged in this matter;
3. Approve the attached Factual and Legal Analyses and the appropriate letters; and
4. Close the file.


General Counsel

06/19/15
Date

BY:


Gregory R. Baker
Deputy General Counsel


Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration


Ruth Heilizer
Attorney
Complaints Examination
& Legal Administration